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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,781	08/19/2003	Horst Schonebeck	60,130-1872;02MRA0412	4111

26096 7590 11/16/2005

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EXAMINER
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SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/643,781	<b>Applicant(s)</b> SCHONEBECK, HORST	
	<b>Examiner</b> Lynda M. Salvatore	<b>Art Unit</b> 1771	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not found persuasive as previously set forth in sections 3-11 of the Final Office Action.

With respect to Applicant's arguments regarding the anticipation rejection made with the Burmester et al., reference, the Examiner maintains that absent any distinguishing features, the buffer layer taught by Burmester et al., can qualify as decorative. Applicant has not set forth what constitutes the claimed decorative layer, set forth the positioning of said decorative layer or precluded the addition of other layers. To reiterate, Applicant has not specifically claimed a visible decorative layer or a layer of any specific type of material having a pattern, embossing, or "decoration" which would serve to patently distinguish over any layer material. In other words, the mere recitation that a layer is decorative does not automatically patently distinguish from any other prior art layer positioned in the claimed manner. Thus, the Examiner maintains that the prior art buffer layer presently meets all of the structural limitations of the claimed decorative layer set forth.

Applicant further argues that the prior art of Burmester et al., does not teach a spring body which is capable of preventing penetration of liquid plastic through the spring body and thus cannot function as a barrier layer. In response, the Examiner respectfully points out that it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. In does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138  
Applicant claims an air-permeable fleece barrier layer. In the textile art, generally fleece is defined as a soft bulky deep-piled knitted or woven fabric (<http://www.merriam-webster.com/mw/netdict.htm>). To that end, Burmester et al., teach a spring layer comprising a knitted network of fibers (claims 1,2 and 11). As such, the Examiner maintains that the spring layer of Burmester et al., presently meet all of the structural limitations of the claimed barrier layer set forth.

With regard to Applicant's arguments that the prior art of Burmester et al., does not teach the claimed back foaming process, the Examiner maintains the previously set forth arguments regarding process limitations in article claims. (see section 3 of the Office Action dated 3/10/05)

With respect to the anticipation rejections made with Volland et al., Applicant's arguments regarding the claimed barrier layer are not persuasive. Specifically, Applicant argues that Volland et al., teach a barrier layer made from a foam-impermeable film or paper rather than the claimed fleece. In response, it is respectfully pointed out that said foam-impermeable film or paper is an alternative embodiment to the disclosed bonded fabric. Recall, in the final product structure, Volland et al., teach a multi-layer permeable covering structure comprising an upper polyamide textile layer and a lower knitted polyamide layer bonded to a foam layer.

With respect to Applicant's arguments that there is no motivation to combine references to form the obviousness rejection set forth in section 7 of the Office Action dated 3/10/05, the Examiner maintains that the prior art of O'Brien et al., was relied upon to evidence that providing a fiber reinforced foam is known in the art. Though, O'Brien et al., is specifically directed to headliners whereas the prior art of Burmester et al., and Volland et al., are directed to seat cushions, it is the position of the Examiner that one of ordinary skill in the art would recognize the benefits of providing a seat cushioning element with a fiber reinforced foam.

With respect to Applicant's arguments that the combination of prior art fails to teach the limitation recited in claim 22 of providing at least one spacer fabric having an open cellular structure, the Examiner respectfully disagrees. The Examiner asserts that the porous nature of the glass fiber mat taught by O'Brien et al., inherently meet the limitation of providing a spacer fabric with an open cellular structure. In addition, the secondary reference of O'Brien et al., also teach a foam backed cloth (Figure 5, 64) joined to foam layer (80). The Examiner considers the foam backed cloth comprising an open cell foam sufficient to meet the presently claimed spacer fabric having an open cellular structure



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